

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**THE UNIVERSITY OF CHICAGO and  
GOKHAN DALGIN,**

**Plaintiff,**

**v.**

**CHRISTINA POULOS, Director of the  
California Service Center of the  
U.S. Citizenship and Immigration Services;  
MICHAEL CHERTOFF, Secretary of the  
U.S. Department of Homeland Security;  
and ROBERT S. MUELLER, III, Director  
of the Federal Bureau of Investigation,**

**Defendants.**

**CASE NO.**

FILED: AUGUST 22, 2008

08CV4823

JUDGE GRADY

MAGISTRATE JUDGE MASON

AO

**COMPLAINT FOR MANDAMUS**

Plaintiffs THE UNIVERSITY OF CHICAGO and GOKHAN DALGIN, by and through their attorneys, Kempster, Keller & Lenz-Calvo, Ltd., for their Complaint for Mandamus against Defendants, CHRISTINA POULOS, Director of the California Service Center of the U.S. Citizenship and Immigration Services; MICHAEL CHERTOFF, Secretary of Homeland Security; and ROBERT S. MUELLER, III, Director of the Federal Bureau of Investigation, allege as follows:

**Nature of the Case and Parties**

1. This is a civil action to compel the California Service Center of the U.S. Citizenship and Immigration Services to adjudicate Plaintiffs' Form I-129 Petition for a Nonimmigrant Worker ("Petition") that was filed on August 16, 2007. *See* **Exhibit A**.

2. Plaintiff GOKHAN DALGIN, the beneficiary of the Petition, is a native citizen of Turkey born on April 14, 1973. Plaintiff UNIVERSITY OF CHICAGO (“Petitioner” or the “University”), the petitioner on the Petition, is a leading institute of higher education recognized worldwide for its contributions to scholarship and research. Dr. Dalgin is an accomplished biologist and holds a Ph.D. degree in cell and developmental biology from the Oregon Health & Science University. Petitioner filed the Petition on behalf of Dr. Dalgin to work at the University’s Department of Organismal Biology & Anatomy as a Postdoctoral Scholar under a fellowship awarded from the Juvenile Diabetes Research Foundation.
3. Defendants are the Director of the California Service Center for U.S. Citizenship and Immigration Services (the “Service”), the Secretary of the Department of Homeland Security (“DHS”), and the Director of the Federal Bureau of Investigation. They are being sued in their official capacity.

#### **Jurisdiction and Venue**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1361, and 2201 *et seq.*, and 5 U.S.C. § 701 *et seq.*
5. Venue is proper in this District pursuant to 28 U.S.C. §1391(e) because Defendants maintain offices in this District, a substantial part of the events and omissions giving rise to this matter occurred in this District, and Plaintiffs reside in this District.

#### **Statement of the Case**

6. On August 16, 2007, the University filed an I-129 Petition for a Nonimmigrant Worker with the Service seeking a specialty occupation work visa for Dr. Dalgin. Petitioner requested and paid for Premium Processing Service, which requires a \$1,000 fee payable

to Defendant DHS. Upon accepting the fee and the Petition as a Premium Processing case, the Service indicated that, in accordance with its program, Petitioner should receive a decision on the Petition within 15 days of receipt.

7. One month after filing the Petition, the University began filing inquiries with the Service. On September 17, 2007, Petitioner filed an electronic inquiry with the California Service Center. In response, the Service indicated that the case was undergoing a security clearance.
8. Four months after the initial inquiry, Petitioner filed another inquiry with the Service, in January 2008. The Service's response indicated that background checks remained open, and therefore, no decision could be made. The Service also indicated that a refund of the Premium Processing fee would be processed only after the Petition is adjudicated.
9. Later that same month, January 2008, Petitioner contacted Michael Dougherty, the Service's Ombudsman in DHS, to inform Mr. Dougherty of the delay in the Petition's adjudication time.
10. Two months later, in March 2008, the University filed another inquiry with the California Service Center. The Service indicated in its response that the case was still delayed because of pending background checks.
11. Also in March 2008, Petitioner contacted and requested the assistance of the Office of the Honorable Richard J. Durbin, U.S. Senator of Illinois. Senator Durbin's office confirmed that it would file an inquiry; however, the Petition remains unadjudicated despite the office's efforts.
12. In April 2008, Mr. Dougherty responded to the inquiry that was submitted three months earlier to the Ombudsman's office. *See Exhibit B.* In the response, Mr. Dougherty

indicated that a formal inquiry was made to the Service, and Petitioner should receive a response within 45 days. The Service, however, did not issue an additional response after the Ombudsman's correspondence.

13. In May 2008, Petitioner requested the assistance of the undersigned law firm, Kempster, Keller & Lenz-Calvo, Ltd., to file inquiries and request that the Service render a decision on the Petition. On May 16, 2008, one of Petitioner's attorneys filed an inquiry, to which the Service indicated that open security checks have delayed the Petition's adjudication. *See Exhibit C.* Petitioner's counsel filed an additional inquiry in May 2008 with Ruth A. Dorochoff, District Director of the Chicago Office of USCIS, in an effort to obtain a decision on the Petition. Ms. Dorochoff did not issue a response.
14. In addition to the above correspondences and inquiries, Petitioner called the National Customer Service Center regularly and conducted regular on-line status checks without any resolution of the case.
15. Despite a delay of more than one year, the Service has failed to adjudicate the Petition. Because of the Service's failure to adjudicate the Petition, Dr. Dalgin cannot take up his fellowship from the Juvenile Diabetes Research Foundation and conduct research at the University's Department of Organismal Biology & Anatomy.
16. As the above shows, Petitioner has repeatedly filed inquiries and maintained correspondence with the Service to adjudicate the Petition. Plaintiffs filed the Petition on August 16, 2007, and the Petition has yet to be adjudicated.
17. On information and belief, namely the Service's own representation, the normal period prescribed by Defendants to adjudicate a Form I-129 Petition for a Nonimmigrant

Worker paid for and accepted as a Premium Processing case is 15 days. To date, over one year has passed since the Service received the Petition.

**Claim for Relief**

18. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiffs' Petition and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' case.
19. Defendants willfully and unreasonably have delayed in, and have refused to adjudicate Plaintiffs' Petition, thereby, depriving Plaintiffs of their rights under 5 U.S.C. § 555(b) to the adjudication of their Petition in a reasonable time.
20. Defendants owe Plaintiffs the duty to act on the Petition within a reasonable time and have unreasonably failed to perform that duty.
21. Plaintiffs have made numerous status inquiries in an attempt to secure adjudication of the Petition.
22. Plaintiffs have exhausted any administrative remedies that may exist, and have not caused or contributed to the Service's delay in adjudicating the Petition.

**Prayer for Relief**

**WHEREFORE** Plaintiffs pray that this Court:

- A. Accept jurisdiction and maintain continuing jurisdiction of this Action.
- B. Compel Defendant FBI to issue the results of a criminal background and/or name check, to the extent that such checks are required by law for an I-129 Petition, relating to Plaintiffs' Petition to the Service and the Court within fifteen (15) days.
- C. Compel Defendants Service and Department of Homeland Security to adjudicate Plaintiffs' Petition within fifteen (15) days.
- D. Grant such other and further relief as this Court deems proper under the circumstances.

Dated: August 22, 2008

/s/Robert C. Milla  
Robert C. Milla

KEMPSTER, KELLER & LENZ-CALVO, LTD.  
332 S. Michigan Avenue, Suite 1428  
Chicago, IL 60604  
IL Atty No. 6290234  
(312) 341-9730  
Attorneys for Plaintiffs

**THE UNIVERSITY OF CHICAGO and  
GOKHAN DALGIN**

**EXHIBITS:**

- Exhibit A** Copy of Form I-797C Notice of Action, verifying the receipt date of August 16, 2007 for Plaintiffs' Form I-129 Petition for a Nonimmigrant Worker.
- Exhibit B** Copy of correspondence from Michael Dougherty, Service Ombudsman in DHS, in response to Plaintiffs' inquiry.
- Exhibit C** Copy of inquiry and correspondence between Plaintiffs' counsel and the Service regarding Plaintiffs' Petition.



RECEIPT NUMBER WAC-07-243-53620		CASE TYPE I129 PETITION FOR A NONIMMIGRANT WORKER
RECEIVED DATE August 16, 2007	PRIORITY DATE	PETITIONER THE UNIVERSITY OF CHICAGO
NOTICE DATE August 20, 2007	PAGE 1 of 2	BENEFICIARY A135 483 427 DALGIN, GOKHAN
THE UNIVERSITY OF CHICAGO C/O MARY SCHNETZ H 1B ADVISER 1414 E 59 ST RM 291 OFC OF INTL AF CHICAGO IL 60637		Notice Type: Premium Processing Receipt Notice Amount received: \$ 1820.00

Thank you for choosing to use the U.S. Citizenship and Immigration Service's Premium Processing Program. The above petition or application has been received and accepted as a Premium Processing case. You should receive a notice regarding your case within 15 days from the date shown as the received date above. If the Service needs to contact you regarding your case they may do so by mail, telephone, facsimile or e-mail using the information you provided.

Please notify us immediately if any of the above information is incorrect.

If you need to contact us regarding your Premium Processing case you can do so using the information immediately below. The mailing address, e-mail address and phone number listed below is for use in relation to cases filed under the Premium Processing Service program only. You can obtain case status information from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case shown above by calling the phone number listed below.

CALIFORNIA SERVICE CENTER (CSC) Premium Processing:

Routine Mail: P.O. Box 10825, Laguna Niguel, CA 92607-0825

Courier Delivery Address: 24000 Avila Road, 2nd Fl., Room 2302, Laguna Niguel, CA 92677

I-129 PP Fax: 949-389-3460

PP Phone Number: 1-866-315-5718

AUG 20 2007

Email box: CSC-Premium.Processing@dhs.gov

This notice does not grant any immigration status or benefit. It is not even evidence that this case is still pending. It only shows that the application or petition was filed on the date shown.

**If this case is an I-130 Petition** - Filing and approval of a Form I-130, Petition for Alien Relative, is only the first step in helping a relative immigrate to the United States. The beneficiaries of a petition must wait until a visa number is available before they can take the next step to apply for an immigrant visa or adjustment of status to lawful permanent residence. To best allocate resources, USCIS may wait to process forms I-130 until closer to the time when a visa number will become available, which may be years after the petition was filed. Nevertheless, USCIS processes forms I-130 in time not to delay relatives ability to take the next step toward permanent residence once a visa number does become available. If, before final action on the petition, you decide to withdraw your petition, your family relationship with the beneficiary ends, or you become a U.S. citizen, call 800-375-5283.

**Applications requiring biometrics**- In some types of cases USCIS requires biometrics. In such cases, USCIS will send you a SEPARATE appointment notice with a specific date, time and place for you to go to a USCIS Application Support Center (ASC) for biometrics processing. You must WAIT for that separate appointment notice and take it (NOT this receipt notice) to your ASC appointment along with your photo identification. Acceptable kinds of photo identification are: a passport or national photo identification issued by your country, a drivers license, a military photo identification, or a state-issued photo identification card. If you receive more than one ASC appointment notice, even for different cases, take them both to the first appointment.

**If your address changes**- If your mailing address changes while your case is pending, call 800-375-5283 or use the

Please see the additional information on the back. You will be notified separately about any other cases you filed.

08CV4823

JUDGE GRADY

MAGISTRATE JUDGE MASON



EXHIBIT

A





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(Cont')

"Online Change of Address" function on our website. Otherwise, you might not receive notice of our action on this case.

Please see the additional information on the back. You will be notified separately about any other cases you filed.





MAGISTRATE JUDGE MASON

AO

*Office of the  
Citizenship and Immigration Services Ombudsman*U.S. Department of Homeland Security  
Mail Stop 1225  
Washington, D.C. 20528-1225**Homeland  
Security**

March 26, 2008

Ms. [REDACTED]  
University of Chicago  
[REDACTED]  
Chicago, IL 60637-2916

RE: Mr./Ms. Gokhan Dalgin

Dear Ms. Felden:

Thank you for your recent inquiry regarding your immigration issue.

Upon receipt of your information, the office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) initiated a formal inquiry with the U.S. Citizenship and Immigration Services (USCIS). USCIS should issue a response to you within forty-five (45) days. If you do not receive a response within this period, please notify our office.

Please be aware that although the office of the CIS Ombudsman collaborates with USCIS, it is an independent entity within the Department of Homeland Security (DHS). The office of the CIS Ombudsman is charged with assisting individuals who experience difficulties with the USCIS benefits process. Additionally, the office of the CIS Ombudsman is dedicated to identifying systemic problems in the immigration benefits process, and to recommending solutions to USCIS. Therefore, the concerns you raised in your letter will be considered as our office develops recommendations to improve USCIS' administrative practices.

Once again, thank you for contacting the office of the CIS Ombudsman, and for giving us the opportunity to serve you.

Sincerely,

Michael Dougherty  
Ombudsman

MD/de [Signature]

**EXHIBIT****B**

MAGISTRATE JUDGE MASON

**Robert Milla**

AO

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**From:** Cheryl Lenz-Calvo  
**Sent:** Tuesday, May 27, 2008 9:29 AM  
**To:** Robert Milla  
**Subject:** FW: WAC-07-243-53620

-----Original Message-----

**From:** CSC XII 129 [mailto:[REDACTED]@dhs.gov]  
**Sent:** Tuesday, May 27, 2008 9:22 AM  
**To:** Cheryl Lenz-Calvo  
**Subject:** RE: WAC-07-243-53620

The processing of this case has been delayed as USCIS is currently awaiting the results of required security checks. These background checks are required of all who apply for the immigration benefit you are [your client is seeking]. USCIS will make every effort to make a decision on this case as soon as the security checks are complete.

The status of the case, processing dates, addresses and necessary information can be found on line at [www.USCIS.gov](http://www.USCIS.gov). Under "Check Case Status", enter receipt number i.e. WAC. You can also sign up to be notified of any changes occurring with this petition. The National Customer Service is available at 1-800-375-5283 Monday through Friday, 8:00 AM to 5:00 PM, PST.

[REDACTED]  
Adjudications Officer  
Congressional & Customer Services Division  
California Service Center

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**From:** Cheryl Lenz-Calvo [mailto:[REDACTED]@klc-ltd.com]  
**Sent:** Friday, May 16, 2008 1:27 PM  
**To:** 129, CSC-XII  
**Subject:** WAC-07-243-53620

Dear Sir or Madam:

On August 16, 2007, Form I-129, Petition for a Nonimmigrant Worker, was filed by the University of Chicago on behalf of Mr. Gokhan Dalgin. This petition with receipt number WAC-07-243-53620 also included Form I-907, Request for Premium Processing.

The University of Chicago has followed up with US Citizenship and Immigration Services on numerous occasions during the past nine months, however this petition has still not been adjudicated. These efforts have included calls to the National Customer Service Center, emails to the California Service Center Premium Processing Unit, as well as the filing of a CIS Ombudsman Form DHS-7001. As a result of this final action, the University of Chicago received a letter from Michael Dougherty dated March 26, 2008, which indicated that USCIS would issue a response within forty-five (45) days. This deadline (05/10/2008) subsequently passed while the H-1B visa petition remains pending.

5/27/2008

**EXHIBIT****C**

After repeated, unsuccessful attempts to obtain a timely adjudication of this petition, the University of Chicago has authorized our office to take the appropriate actions in this regard. Attached please find a scanned copy of Form G-28, Notice of Appearance as Attorney or Representative, as well as a general authorization for signature provided to Kempster, Keller and Lenz-Calvo, Ltd. by the University of Chicago.

We respectfully request that you adjudicate Form I-129 (WAC-07-243-53620) in a timely fashion so that Mr. Dalgin may begin his employment with the University of Chicago. Our office would be happy to provide any additional information or documentation that would be helpful in this matter.

Attached is form G-28.

Thank you,  
<<DALGIN.pdf>>

Cheryl Lenz-Calvo  
Kempster, Keller & Lenz-Calvo, Ltd.  
332 S. Michigan Avenue, Suite 1428  
Chicago, IL 60604  
tel: 312-341-9730  
fax: 312-341-0399